

Response to Final Office Action mailed March 11, 2003

A. Claims In The Case

Claims 1-36, 39, 173, and 174 are pending. Claims 1-36, 39, 173, and 174 have been rejected. Claim 1 has been amended.

B. The Claims Are Not Anticipated By Stabile Pursuant To 35 U.S.C. § 102(e)

Claims 1-19, 39, and 173 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No.5,872,623 to Stabile et al. ("Stabile"). Claim 1 has been amended. Applicant respectfully disagrees that the claims are anticipated by Stabile.

The standard for "anticipation" is one of fairly strict identity. To anticipate a claim of a patent, a single prior source must contain all the claimed essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 U.S.P.Q. 81, 91 (Fed. Cir. 1986); *In re Donahue*, 766 F.2d 531, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

The Examiner states:

Applicant's argument that the Stabile reference does not teach the cover layer at a distance above the supporting member such that dislodgement of particles is inhibited is erroneous. Given its broadest interpretation, this limitation does not require any separation between the layers at all, as long as particle dislodgment is prevented. A distance of zero is sufficient to satisfy this claim limitation.
(Office Action, page 13)

Applicant respectfully disagrees that the claim is unpatentable over the cited art. Claim 1 describes a combination of features including, but not limited to, the features of:

wherein the cover layer is positioned above the supporting member at a distance such that the cover layer inhibits dislodgement of the particle from the cavity during use, and wherein the cover layer is positioned such that a channel is formed between an upper surface of the supporting member and the cover layer, and wherein the fluid passes through the channel during use

Support for the amendments to the claims can be found, for example, in Applicant's specification which states:

After the support structures 241 are placed on the wafer the transparent cover plate 240 is placed upon the support structures. The support structures inhibit the transparent cover sheet from contacting the silicon wafer 200. In this manner, a channel is formed between the silicon wafer and the transparent cover plate which allow the fluid to pass into the cavity, while inhibiting displacement of the particle by the fluid.

(Specification, pg. 18, l. 26 through pg. 19, l. 2)

Stabile teaches, "[t]he top layer is chemically etched or formed by laser ablation to define open areas that will define wells that serve as light transmitting apertures...the top masking layer is bonded to the lower translucent layer." (Stabile, column 12, lines 53-58) Stabile appears to teach a top layer bonded to a lower layer. Stabile does not appear to teach or suggest a channel formed between the upper surface of the sensor array and the cover, where the cover is positioned above the supporting member at a distance. Applicant submits the cited art does not appear to teach or suggest at least the quoted features of claim 1. Applicant respectfully requests removal of the rejection to claim 1 and the claims dependent thereon.

C. The Claim Is Not Obvious Over Stabile In View Of Ito Pursuant To 35 U.S.C. § 102(e)

Claim 20 was rejected as being unpatentable over Stabile in view of U.S. Patent No. 5,583,054 to Ito et al. ("Ito"). Applicant respectfully disagrees that the claim is unpatentable over Stabile in view of Ito.

For at least the reasons previously mention, claim 20 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 20.

D. The Claim Is Not Obvious Over Stabile In View Of Colin Pursuant To 35 U.S.C. § 102(e)

Claim 21 was rejected as being unpatentable over Stabile in view of U.S. Patent No. 5,773,307 to Colin et al. ("Colin"). Applicant respectfully submits that the claim is not obvious over Stabile in view of Colin.

For at least the reasons previously mention, claim 21 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 21.

E. The Claim Is Not Obvious Over Stabile In View Of Clark, Jr. Pursuant To 35 U.S.C. § 102(e)

Claim 22 was rejected as being unpatentable over Stabile in view of U.S. Patent No. 5,690,807 to Clark Jr. et al. ("Clark Jr."). Applicant respectfully submits that the claim is not obvious over Stabile in view of Clark Jr.

For at least the reasons previously mention, claim 22 is patentable over the cited art.
Applicant respectfully requests removal of the rejection of claim 22.

F. The Claims Are Not Obvious Over Stabile In View Of McGarry Pursuant To 35 U.S.C. § 102(e)

Claims 23, 24, and 174 were rejected as being unpatentable over Stabile in view of U.S. Patent No. 5,248,742 to McGarry et al. (“McGarry”). Applicant respectfully submits that the claims are not obvious over Stabile in view of McGarry.

For at least the reasons previously mention, claims 23, 24, and 174 are patentable over the cited art. Applicant respectfully requests removal of the rejections of claims 23, 24, and 174.

G. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View Of Bretscher Pursuant To 35 U.S.C. § 102(e)

Claim 25 was rejected as being unpatentable over Stabile in view of McGarry and in further view of U.S. Patent No. 5, 714,122 to Bretscher et al. (“Bretscher”). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Bretscher.

For at least the reasons previously mention, claim 25 is patentable over the cited art.
Applicant respectfully requests removal of the rejection of claim 25.

H. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View Of Arnold Pursuant To 35 U.S.C. § 102(e)

Claim 26 was rejected as being unpatentable over Stabile in view of McGarry and in further view of U.S. Patent No. 5, 616,790 to Arnold et al. (“Arnold”). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Arnold.

For at least the reasons previously mention, claim 26 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 26.

I. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View of Russell Pursuant To 35 U.S.C. § 102(e)

Claim 27 was rejected as being unpatentable over Stabile (“Stabile”) in view of McGarry and in further view of U.S. Patent No. 5, 137,833 to Russell et al. (“Russell”). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Russell.

For at least the reasons previously mention, claim 27 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 27.

J. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View of Schutz Pursuant To 35 U.S.C. § 102(e)

Claim 28 was rejected as being unpatentable over Stabile in view of McGarry and in further view of “Direct Observation of Ligand Colocalization on Individual Receptor Molecules”

Biophysical Journal, 1998, 74, 2223-2226, by Schutz et al. ("Schutz"). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Schutz.

For at least the reasons previously mention, claim 28 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 28.

K. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View of Issachar Pursuant To 35 U.S.C. § 102(e)

Claim 29 was rejected as being unpatentable over Stabile in view of McGarry and in further view of U.S. Patent No. 5, 156,972 to Issachar et al. ("Issachar"). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Issachar.

For at least the reasons previously mention, claim 29 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 29.

J. The Claims Are Not Obvious Over Stabile In View Of McGarry And In Further View of Fish Pursuant To 35 U.S.C. § 102(e)

Claims 30, 35, and 36 were rejected as being unpatentable over Stabile in view of McGarry and in further view of U.S. Patent No. 5, 126,276 to Fish et al. ("Fish"). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Fish.

For at least the reasons previously mention, claims 30, 35, and 36 are patentable over the cited art. Applicant respectfully requests removal of the rejection of claims 30, 35, and 36.

K. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View of Lauritzen Pursuant To 35 U.S.C. § 102(e)

Claim 31 was rejected as being unpatentable over to Stabile in view of McGarry and in further view of “Peptide dot immunoassay and immunoblotting: Electroblotting from aluminum thin-layer chromatography plates and isoelectric focusing gels to activated nitrocellulose” *Electrophoresis*, **1993**, 14, 852-859, by Lauritzen et al. (“Lauritzen”). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Lauritzen.

For at least the reasons previously mention, claim 31 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 31.

L. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View of Khanna Pursuant To 35 U.S.C. § 102(e)

Claim 32 was rejected as being unpatentable over Stabile in view of McGarry and in further view of U.S. Patent No. 5, 223,393 to Khanna et al. (“Khanna”). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Khanna.

For at least the reasons previously mention, claim 32 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 32.

M. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View of O'Daly Pursuant To 35 U.S.C. § 102(e)

Claim 33 was rejected as being unpatentable over Stabile in view of McGarry and in further view of U.S. Patent No. 5, 391,272 to O'Daly et al. ("O'Daly"). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of O'Daly.

For at least the reasons previously mention, claim 33 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 33.

N. The Claim Is Not Obvious Over Stabile In View Of McGarry And In Further View of Cho Pursuant To 35 U.S.C. § 102(e)

Claim 34 was rejected as being unpatentable over Stabile in view of McGarry and in further view of "An Unnatural Biopolymer" *Science*, **1993**, 261, 1303-1305, by Cho et al. ("Cho"). Applicant respectfully submits that the claim is not obvious over Stabile in view of McGarry and in further view of Cho.

For at least the reasons previously mention, claim 34 is patentable over the cited art. Applicant respectfully requests removal of the rejection of claim 34.

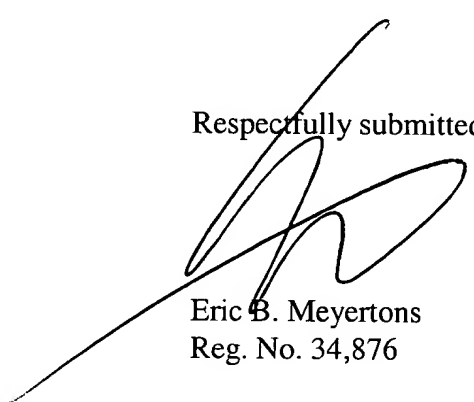
O. Summary

Applicant believes that all claims are in condition for allowance. Favorable reconsideration is respectfully requested.

Inventors: McDevitt et al.
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Applicant believes no fees are due with the filing of this response. If any extension of time is required, Applicant hereby requests the appropriate extension of time. If any fees are required or if any fees have been overpaid, please appropriately charge or credit those fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account Number 50-1505/5119-00501/EBM.

Respectfully submitted,



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